

No. 05-4173

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**FILED**

FEB - 9 2006

LEONARD GREEN, Clerk

SAMUEL A. ASHLEY,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

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FILED  
JAMES BOYD  
CLERK

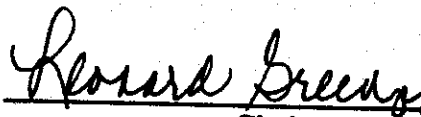
Before: MERRITT, GILMAN, and ROGERS, Circuit Judges.

A review of the documents before the court in this appeal indicates that the appellant filed a 28 U.S.C. § 2255 motion to vacate on October 5, 2004. A motion for discovery was denied on August 24, 2005 from which the appellant appealed on September 2, 2005. The judgment of the district court denying the § 2255 motion was entered on January 9, 2006.

At the time the appellant appealed on September 2, 2005, no final or appealable order terminating all the issues presented in the litigation had been entered. *See Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373 (1981); *Catlin v. United States*, 324 U.S. 229, 233 (1945). A prejudgment order denying discovery is not immediately appealable. *See Cochran v. Birkel*, 651 F.2d 1219, 1221 (6th Cir. 1981); *Dow Chem. Co. v. Taylor*, 519 F.2d 352, 354 (6th Cir. 1975).

It is ordered that appeal No. 05-4173 from the prejudgment order denying discovery is dismissed. Any new appeal from the January 9, 2006 judgment must be filed in the district court within the time provided by Fed. R. App. P. 4(a)(1)(B).

ENTERED BY ORDER OF THE COURT

  
Clerk